

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ERIC KALBACHER,

Plaintiff,

- against-

BERNARD MILLER,

Defendant.

**REPORT and
RECOMMENDATION
05-cv-2401 (ARR)**

During a telephone conference held on May 11, 2007, I scheduled a settlement conference for June 21, 2007. Neither party appeared on that date. Accordingly, I entered the following order:

This matter was scheduled for a settlement conference today. No party appeared. When my chambers staff inquired of plaintiff's counsel, we learned that a settlement agreement was reached on or about May 21, 2007, that payment consummating the settlement is expected on or about July 16, 2007, and that a stipulation of discontinuance will be filed on or about that date. Accordingly, plaintiff's counsel is hereby ordered to file via ECF, by July 16, 2007, a stipulation of discontinuance, or a written status report explaining why such a stipulation has not been filed.

See Order dated June 21, 2007.

The required status report has not been submitted, and counsel has not otherwise communicated with the court. Accordingly, I respectfully recommend that this action be dismissed as settled, without prejudice to move to reopen the case by August 21, 2007, if the settlement has not been consummated by then.

Any objections to this report and recommendation must be filed within ten days of receipt and in any event no later than August 21, 2007. Failure to file timely objections may waive the right to appeal the District Court's order. See 28 U.S.C. §636(b) (1); Fed.R.Civ.P. 6(a), 6(e), 72; Small v. Secretary of Health and Human Services, 892 F.2d 14, 15 (2d Cir. 1989).

SO ORDERED.

_____/s/_____
STEVEN M. GOLD, U.S. Magistrate Judge

**Brooklyn, New York
August 7, 2007**

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